Margaret Davie, *Frances Davie*, and *Trephena Davie*, (Daughters of Sir *William Davie*, Bart. Deceaſed) Infants, by *Nicholas Pollexfen*, Eſq; their next Friends. } **Appellants.**

Nicholas Hooper the Younger, Eſq; and *Mary* his Wife, who was only Daughter of the ſaid Sir *William Davie*, by his Firſt Wife. } **Reſpondents.**

The Reſpondents CASE.

THAT the ſaid Sir *William Davie* (having but 5000 *l.* for his Portion, in the Life-time of Sir *John Davie*, Bart. his Eldeſt Brother) did Marry with *Mary Stedman*, who was then under the Age of 21 Years, and was Entitled to an Eſtate of Inheritance in *Somerſetſhire*, of the value of 250 *l. per Annum*, the greateſt part of which was then in Jointure to *Mary Stedman* Widow, her Mother-in-Law.

April 1. 1687. THAT Precedent to ſuch Marriage, and in Conſideration thereof, the ſaid Sir *William Davie*, then *William Davie* of the *Middle-Temple*, Eſq; together with Sir *John Davie* his Brother, and *Margaret* their Mother, did by Articles of Agreement, Covenant with the ſaid *Mary Stedman* and *Henry Long*, Eſq; that He, his Executors, and Adminiſtrators, would within One Year after the Marriage, at the Requeſt of the Truſtees, ſettle and aſſure the Sum of 5000 *l.* or good Securities for Money, in manner following, (*viz.*) 2000 *l.* part of the 5000 *l.* to and for the ſole Benefit of the ſaid *Mary Stedman*, the intended Wife, in Caſe the ſaid Marriage ſhould take Effect, and he the ſaid *William Davie*, ſhould dye in the Life-time of the ſaid *Mary*, without any Iſſue by her, but if the ſaid *William Davie* ſhould dye in the Life-time of the ſaid *Mary*, leaving Iſſue by her Living, or then in *ventre ſa mere* that ſhould afterwards be Born Alive, then the ſaid *William Davie* was to ſettle but 1500 *l.* part of the 5000 *l.* on the ſaid *Mary*, which 1500 *l.* as to the Intereſt thereof, was to be for the Benefit of the ſaid *Mary* the intended Wife, during her Life, and after her Deceaſe, the Principal was to be for the benefit of the Iſſue of that Marriage.

AND by the ſame Articles, it was further Covenanted that the ſaid *William Davie*, would within the time aforeſaid, upon Requeſt of the Truſtees, ſettle and aſſure 2500 *l.* other part of the ſaid 5000 *l.* to and for the Uſe of the Iſſue, of that Marriage, in ſuch proportion as the ſaid *William Davie* ſhould by any Writing Appoint.

PROVIDED always that if no ſuch Requeſt ſhould be made within a Year after the ſaid intended Marriage, that then the ſaid Sir *John Davie* and his Mother, were to be diſcharged of their ſaid Covenants, but ſuch Proviſo was not to extend to the diſcharge of the ſaid *William Davie*, or of his Executors or Adminiſtrators.

THAT the ſaid Marriage was afterwards had, and the Reſpondent *Mary*, is the only Iſſue of that Marriage.

THAT the Reſpondent *Mary*'s Mother, when ſhe came of Age, was prevailed on by Fine, and common Recovery, and Deeds, leading the Uſes thereof, to ſettle her ſaid *Somerſetſhire* Eſtate (by which Settlement the Reſpondent *Mary* claims the ſame) to the Uſe of the ſaid *William Davie* for Life, the Remainder to *Mary* his Wife, for her Life, Remainder to all the Sons of that Marriage, in-tayle Male, Remainder to the Daughters of ſuch Marriage, in ſuch proportion, as ſaid *William Davie* ſhould limit, Remainder to the Heirs Males of the Body of ſaid *William Davie*, Remainder to the Heirs of his Body on his then Wife, Remainder to the right Heirs of Sir *William Davie*, ſhortly after which, this Reſpondent *Mary*'s Mother died.

THAT the ſaid Sir *John Davie*, alſo died, on whoſe Death the ſaid Sir *William Davie*, had an Eſtate come to him in *Devonſhire*, of 2000 *l. per Annum* (which is now gone over to the Heir Male of the Family.)

THAT the ſaid Sir *William Davie*, did Marry with *Abigail* the Daughter of *John Pollexfen*, Eſq; with whom he had 5000 *l.* Portion, and had Iſſue by her Three Daughters, the now Appellants, and having Purchaſed an Eſtate in *Devonſhire*, to the value of 1400 *l. per Annum*, by Deeds of Leaſe and Releaſe (Ingroſſed and Executed the Day before his Death, but antedated ſix Months back) ſettled his new Purchaſed Eſtate in *Devonſhire*, and charged the ſame with the Payment of 5000 *l.* a piece to each of the Appellants, and thereby intayled the ſame, Subject to ſuch Charge on himſelf, and the Heirs Males of his Body, with Remainder over to the Appellants, and the Reſpondent *Mary*, ſo that he might at any time have barr'd ſuch Remainder, and did by his Will, Dated in *February*, 1607, Deviſe ſome Legacies to this Reſpondent *Mary*, of ſmall value, and leſs then what he thereby Deviſed to the Appellants, and died the 19*th* Day of *March*, 1607.

THAT the Appellants did by their next Friend, Exhibit their Bill againſt the Reſpondent *Mary*, then an Infant, and likewiſe againſt the Truſtees and Executors of Sir *William Davie* and Others, to have a diſcovery of the ſaid Marriage Articles, and of the Settlement of the ſaid *Somerſetſhire* Eſtate, and amongſt other things to defeat the Reſpondent *Mary* of all Benefit of the ſaid Articles, and the Reſpondent *Mary*, did likewiſe by her next Friend (being then an Infant) Exhibit her Bill againſt the Appellants and the Truſtees and Executors of Sir *William Davie*, to recover what was due to her by the ſaid Articles, and have an account of the Real and Perſonal Eſtate of her Deceaſed Father, and the Writings relating thereto, which Bills being anſwered, the Appellants or ſome one on their behalf, took out and Executed four Commiſſions for Examination of Witneſſes, and the ſaid Cauſes, came afterwards to be heard before the Right Honourable the Lord Keeper of the Great Seal of *Great Britain*, on the 17*th* Day of *November*, 1710. On which Hearing,

HIS Lordſhip declared that the 2500 *l.* was well veſted by the Articles in the Reſpondent *Mary*, and Decreed the ſame to be paid to the *Reſpondents*, with Intereſt after the rate of 5 *l. per Cent.* from the Death of the ſaid Sir *William Davie*, but diſmiſſed the *Reſpondents* Bill as to the 1500 *l.*

THAT the *Appellants* by their Appeal alledge the ſame Decree is Erroneous, in that part which decrees the 2500 *l.* with Intereſt to the *Reſpondents*.

Object. 1. FOR that the Settlement made of the ſaid *Somerſetſhire* Eſtate as aforeſaid, ought to be taken as a Satisfaction for that Sum.

Anſw. SIR *William* had no Intereſt in the *Somerſetſhire* Eſtate, at the time of the Settlement, for that Eſtate moved only from the Reſpondent *Mary*'s Mother, and was never expreſſed or deſigned to be a Satisfaction, for what was limited by the Articles to the Iſſue of that Marriage, and the Reſpondents Claim, the ſame Eſtate, not by the Gift of Sir *William Davie*, but by the ſaid Settlement and Gift of the Reſpondent *Mary*'s Mother, and if ſuch Settlement was a Satisfaction, it muſt have been ſo at the time of making thereof, and it could not then be deemed a Satisfaction, becauſe this Reſpondent *Mary* took nothing thereby but by way of Remainder after an Eſtate Tayle, which the Tenant in Tayle might by a Common Recovery have barr'd and deſtroy'd.

AND beſides ſuch Settlement was never declared or agreed, either by Sir *William Davie*, or his firſt Wife, to be a Satisfaction of the Money agreed to be paid by the Articles.

Object. 2. THE Appellants pretend, that the *Devonſhire* Eſtate of the Value of 1400 *l. per Annum*, ſettled by Sir *William*, by the Deeds of *October* 1706. and what was given to the Reſpondent *Mary*, by his ſaid Will, muſt be deemed as a Satisfaction for what is due by the ſaid Marriage Articles.

Anſw. THAT the Legacies given to the Reſpondent *Mary* are of ſmall Value, and leſs than what is given to each of the Appellants, by the ſame Will; and beſides the *Devonſhire* Eſtate is charged with 15000 *l.* for the Portions of the Appellants, and with 1500 *l.* more by the ſaid Will and Decree for the Benefit of the Appellants, and part thereof to the Value of 220 *l. per Annum* is in Jointure to the Appellants Mother, and the Reſpondent *Mary* had nothing by ſuch Settlement at the making thereof, but a Remainder, together with the Appellants, after an Eſtate Tayle, which Sir *William Davie* might likewiſe have barred when he had thought fit: and it is not pretended Sir *William Davie* ever declared he intended it for a Satisfaction of what he was bound to do by the ſaid Articles.

Beſides the Appellants have each of them more out of Sir *William Davie*'s Eſtate than this Reſpondent *Mary* hath, tho ſhe was his Eldeſt Daughter, theſe Reſpondents not eſteeming the *Somerſetſhire* Eſtate to be part of Sir *William Davie*'s Eſtate; nor do they claim the ſame by his Gift, but by the Gift of the Reſpondent *Mary*'s own Mother.

NOTE, THE Reſpondents are by the Decree debarred of the 1500 *l.* becauſe this Reſpondent *Mary*'s Mother did not ſurvive Sir *William Davie*; tho it is not reaſonable to think, it was the Intention of the Parties, that the Limitation of that Sum to the Iſſue of that Marriage ſhould depend on any ſuch Contingency, and if the Reſpondent *Mary* ſhould have had that 1500 *l.* as well as the 2500 *l.* yet ſhe would have leſs out of Sir *William Davie*'s Eſtate than either of her younger Siſters have.

***THESE** Reſpondents therefore hope, that the Decree in the Points Appealed from ſhall be affirmed, and the Reſpondents have their Coſts.*

Tho. Powis,
Joſ. Jekyll.

Affirmed 14 Feb 1711

Davie & al' Appellants.

Hooper and *Ux'* Respondents.

The Respondents Case.

To be heard at the *Bar* of the *House of Lords*, on *Thursday* the 14*th* Day of *February*, 1711.